

**Filed 8/11/15 by Clerk of Supreme Court
IN THE SUPREME COURT
STATE OF NORTH DAKOTA**

2015 ND 198

State of North Dakota,

Plaintiff and Appellee

v.

Brandon Morel,

Defendant and Appellant

No. 20140454

Appeal from the District Court of Burleigh County, South Central Judicial District, the Honorable David E. Reich, Judge.

AFFIRMED.

Per Curiam.

Alexander J. Stock, Assistant State's Attorney, Burleigh County Courthouse, 514 East Thayer Avenue, Bismarck, N.D. 58501, for plaintiff and appellee.

Danny L. Herbel, The Regency Business Center, 3333 East Broadway Avenue, Suite 1205, Bismarck, N.D. 58501, for defendant and appellant.

Ken R. Sorenson, Office of the Attorney General, 600 East Boulevard Avenue, Department 125, Bismarck, N.D. 58505-0040, for amicus curiae.

State v. Morel

No. 20140454

Per Curiam.

[¶1] Brandon Morel appeals from a judgment entered after a jury found he was guilty of refusal to submit to a chemical test under N.D.C.C. § 39-08-01(1)(e), a class B misdemeanor. Morel argues his prosecution and the refusal statute are unconstitutional under the Fourth Amendment of the United States Constitution and N.D. Const. art. I, § 8, and the district court erred in refusing to give his requested jury instruction informing the jury that he had a statutory right to refuse a chemical test.

[¶2] This Court recently rejected an argument that the criminal refusal statute is unconstitutional under the Fourth Amendment or N.D. Const. art. I, § 8. See State v. Birchfield, 2015 ND 6, ¶ 19, 858 N.W.2d 302; see also State v. Kordonowy, 2015 ND 197, ¶¶ 11-12 (reaffirming our holding in Birchfield). We also recently held a district court did not err in refusing to give a defendant's requested jury instruction informing the jury that he has a right to refuse a chemical test. Kordonowy, at ¶¶ 26-27. We summarily affirm under N.D.R.App.P. 35.1(a)(7).

[¶3] Gerald W. VandeWalle, C.J.
Daniel J. Crothers
Lisa Fair McEvers
Carol Ronning Kapsner
Dale V. Sandstrom